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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human rights Committee

SWEDEN

1. The Committee considered the fourth periodic report of Sweden (CCPR/C/95/Add.4 and HRI/CORE/1/Add.4) at its 1456th and 1457th meetings, on 23 and 24 October 1995 (see CCPR/C/SR.1456 and 1457) and adopted 1/ the following observations:

A. Introduction

2. The Committee welcomes the detailed report presented by Sweden which contains relevant information about changes and developments that have occurred since the consideration of the third periodic report. The Committee also welcomes the answers to questions raised and concerns expressed during the consideration of that report. It expresses its appreciation for the frank dialogue engaged with a competent delegation and for the comprehensive and thorough answers given orally to the wide range of questions asked by members.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee finds that there are no significant factors or difficulties which should prevent the effective implementation of the Covenant in Sweden.

1/ At its 1470th meeting (fifty-fifth session), held on 1 November 1995.

C. Positive aspects

4. The Committee notes with appreciation the high level of achievement of Sweden with regard to the protection of the rights guaranteed in the Covenant.

5. The Committee welcomes the adoption of provisions prohibiting ethnic discrimination in the labour market as well as the additional powers given to the Ombudsman against Ethnic Discrimination by conferring upon him a litigating role in the Labour Court proceedings. It also welcomes the setting up of two parliamentary commissions on migration and immigration policies to identify gaps in legislation and to consider improvements in that regard, as well as the incorporation into the Penal Code of the concept of aggravating circumstances when a crime has had racial, ethnic, religious or other similar motivations.

6. The Committee welcomes the various steps taken by the Government, through legislation, studies, education programmes and integration of gender perspective in all policy areas, with a view to ensuring equality between men and women.

7. The Committee notes with satisfaction the adoption and entry into force on 1 February 1992 of the new Compulsory Mental Care Act and Forensic Mental Care Act, restricting the use of compulsory care.

8. The Committee expresses its appreciation for the creation of the post of the Office of the Children's Ombudsman, and for the provisions introduced in the Penal Code to protect children against sexual abuse, as well as for the monitoring system of intercountry adoption.

9. The Committee welcomes the amendment to the Code on Judicial Procedure, extending judicial review to the restrictions ordered by the public prosecutor to persons deprived of their liberty. The Committee also welcomes the extension of the right to free legal aid for the victims of crimes of violence and crimes involving infringement of physical integrity.

D. Principal subjects of concern

10. The Committee regrets that the Covenant as such cannot be directly invoked before Swedish courts and administrative authorities.

11. The Committee regrets the decision of the State party not to withdraw any of the reservations it made at the time of the ratification of the Covenant.

12. The Committee notes with concern that there is not yet any mechanism to implement views adopted by the Committee under the Optional Protocol to the Covenant.

13. The Committee notes that there remain areas where women are subject to de facto discrimination, in particular with regard to equality of remuneration. The Committee notes with concern that in certain areas, in particular in public offices, the situation of women with regard to equal remuneration for work of equal value has significantly deteriorated recently.

14. Despite efforts made by the Government to eliminate racial and ethnic discrimination, the Committee expresses its concern about the rise of racism and xenophobia within Swedish society and about the high rate of racist crimes and the increase of racist behaviour among the younger part of the population.

15. The length of detention of illegal immigrants, asylum-seekers and persons ordered to be expelled is a cause of concern for the Committee.

16. The Committee is concerned that the Board of Immigration and the Aliens Appeal Board may in certain cases yield their jurisdiction to the Government resulting in decisions of expulsion or denial of immigration or asylum status without the affected individuals having been given an appropriate hearing. In the Committee's view, this practice may, in certain circumstances, raise questions under article 13 of the Covenant.

17. In the view of the Committee, the amendment to the Code on Judicial Procedures stipulating that in certain cases both the convicted person and the public prosecutor need leave to appeal of the Court against a decision in a criminal case may raise in certain circumstances the question of compatibility with article 14, paragraph 5, of the Covenant.

18. The Committee notes that legislative provisions adopted recently by the Riksdag, and providing for the right for everyone to fish and hunt on public lands may have adverse consequences on the traditional rights of the members of the Sami people.

E. Suggestions and recommendations

19. The Committee recommends that all necessary steps be taken by the Government to give legal effects to the rights enshrined in the Covenant in the domestic legal order.

20. The Committee recommends that measures be taken for the establishment of a mechanism to implement the views adopted by the Committee under the Optional Protocol to the Covenant.

21. The Committee recommends that the reservations made to the Covenant be reviewed with a view to withdrawing them.

22. The Committee encourages the Government to continue its efforts to ensure that the principle of equal pay for equal work is effectively implemented.

23. The Committee strongly urges the Government to take appropriate measures to fight the emergence of racist and xenophobic attitudes among some elements of Swedish society. The Committee particularly stresses the importance, in that regard, of educational campaigns in schools and at all levels of society and of media campaigns aimed at building a society where diverse cultures can coexist in a spirit of harmony and enrich one another.

24. The Committee urges the State party to review its legislation governing asylum-seekers and the expulsion of aliens in order to limit the possibility

and extent of detention. The right to have a case reviewed by a competent authority should be available against all decisions of detention, expulsion and refusals of immigration or of asylum.

25. The Committee wishes to receive ample information in the next periodic report of Sweden on the implementation of the legislation on leave to appeal in criminal cases in the light of article 14, paragraph 5, of the Covenant.

26. The Committee recommends that the recognized customary rights of the Sami people be fully protected in the light of article 27 of the Covenant.

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HUMAN RIGHTS COMMITTEE
Fifty-fifth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding Observations of the Human Rights Committee

ESTONIA

1. The Committee considered the initial report of Estonia (CCPR/C/81/Add.5 and HRI/CORE/1/Add.50) at its 1455th and 1459th meetings, on 23 and 25 October 1995 (see CCPR/C/SR.1455 and 1459) and adopted 1/ the following Observations:

A. Introduction

2. The Committee welcomes the initial report of Estonia and expresses its appreciation for the frank and constructive dialogue engaged with the delegation. The Committee however regrets that, although the report provided comprehensive information on prevailing legislation in the field of human rights, no mention was made as to how the Covenant is implemented in practice. The information and the answers given orally by the delegation to the questions raised by members of the Committee somewhat covered those deficiencies, and enabled the Committee to obtain a clearer picture of the situation of human rights in the country.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee notes that it is necessary to overcome vestiges of the totalitarian past and that much remains to be done to strengthen democratic

1/ At its 1471st meeting (fifty-fifth session), held on 2 November 1995.

institutions and respect for the rule of law. It regrets that the Government's efforts in restructuring the legal system and endeavouring to better implement the Covenant have been hampered by lacunae in some existing legislation, and that a number of principles set forth in the 1992 Constitution were not yet implemented by corresponding laws.

4. The Committee notes that at the time of the restoration of independence, there existed in Estonia a significantly large proportion of permanent residents belonging to minorities. The policy of the Government with regard to naturalization and citizenship has raised a number of difficulties which affect the implementation of the Covenant.

C. Positive aspects

5. The Committee expresses its satisfaction at the fundamental and positive changes which have taken place in Estonia, that provide for a better political, constitutional and legal framework for the implementation of the rights enshrined in the Covenant.

6. Estonia's accession to the Covenant and other human rights instruments, soon after its restoration of independence, confirms the genuine commitment of the State party to guarantee the basic human rights to all individuals under its jurisdiction. The recognition by Estonia of the competence of the Committee to receive and consider communications from individuals under the Optional Protocol to the Covenant is of particular importance for the effective implementation of the Covenant.

7. The Committee expresses its satisfaction that in the new Criminal Code which is being drafted, no death penalty is provided and welcomes Estonia's intention to accede to the Second Optional Protocol in the near future.

8. The Committee welcomes the adoption by referendum of a new Constitution, which provides in its articles 3 and 123 that universally recognized principles and norms of international law as well as human rights treaties, including the Covenant, shall be incorporated into the domestic legal order and, upon ratification, are given precedence over inconsistent domestic legal provisions.

9. The adoption of a new Law on Courts as well as the reform of the "Prokuratura" constitute a step forward towards securing the independence and impartiality of the judiciary.

D. Principal subjects of concern

10. The Committee is concerned at the lack of legislative provisions to implement articles 3 and 123 of the Constitution, which affects the Covenant's effective precedence over any inconsistent legislative act. It also remains unclear for the Committee whether a provision of domestic law can be declared null and void if it contradicts the Covenant.

11. The Committee notes with concern that no legislation has yet been adopted regarding the right to compensation for citizens whose rights have been violated by the State or by unlawful behaviour of officials.

12. The Committee expresses its concern that a significantly large segment of the population, particularly members of the Russian-speaking minority, are unable to enjoy Estonian citizenship due to the plethora of criteria established by law, and the stringency of language criterion, and that no remedy is available against an administrative decision rejecting the request for naturalization under the Citizenship Law.

13. Noting that the numerous rights and prerogatives, such as the right to participate in the process of land privatization and the right to occupy certain posts or practise some occupations, are granted solely to Estonian citizens, the Committee is concerned that permanent residents who are non-citizens are thus deprived of a number of rights under the Covenant.

14. The Committee is concerned that the conditions for appointment to or employment in any position in a State or local government agency in particular the automatic exclusion of persons unable to satisfy the requirements of the written oath of conscience regarding their previous activities (under the former regime) may give rise to an unreasonable restriction on the right of access to public service without discrimination.

15. With regard to article 3 of the Covenant, the Committee regrets the limited information it received as to the de facto situation of women in Estonia.

16. With regard to article 4 of the Covenant, the Committee notes that, although there are provisions in the Constitution relating to the imposition of state of emergency, no legislation has yet been adopted in conformity with the requirements in the Covenant.

17. The Committee is concerned that the death penalty can still be imposed in Estonia for crimes which cannot be qualified as the most serious crimes under article 6 of the Covenant. Moreover, the Committee notes with concern that, despite the drafting of a new Criminal Code that will abolish capital punishment, recent amendments to the current Criminal Code have added two more crimes to the list of those punished by capital punishment.

18. The Committee notes that the definition of torture in article 114 of the Criminal Code is limited to physical force and does not encompass psychological torture and duress.

19. The Committee is concerned about cases of excessive use of force by law enforcement officials as well as mistreatment of detainees. It is of particular concern to the Committee that punitive measures, such as solitary detention, may be imposed on juvenile detainees. The Committee notes that the law enforcement system will only be able to function properly when a sufficient number of well-trained police and prison officers are appointed.

20. The Committee is deeply concerned by the fact, as confirmed by the State party in its report, that "prison facilities are overcrowded and that many inmates are subject to unhealthy living conditions". It further regrets that it did not receive sufficient information which would have enabled it to examine the extent to which the State party is in violation of articles 7 and 10 of the Covenant. The Committee further notes with concern that it was not

provided with information regarding separation of accused persons from convicted persons, as required under article 10, paragraph 2 (a), of the Covenant.

21. The Committee is concerned that, as a result of the lack of domestic legislation and procedures governing the treatment of asylum-seekers and the determination of their status, the Government has too often resorted to measures of deprivation of liberty.

22. The Committee expresses concern at limitations to the exercise of freedom of association for long-term permanent residents in Estonia, particularly in the political sphere.

23. The Committee is deeply concerned at the definition of minorities in the Estonian legislation, which only encompasses national minorities, thus restricting the application of the Law on Cultural Autonomy by excluding permanent residents from full participation in minority groups.

E. Suggestions and recommendations

24. The Committee recommends that necessary measures be taken to ensure that all domestic provisions inconsistent with the Covenant be repealed and that laws adopted be in full compliance with the provisions of the Covenant. Regarding the actual application of the Covenant, the Committee requests the State party to indicate in its second periodic report any instances where the Covenant was directly invoked before the courts, as well as about the related results.

25. The Committee recommends that the State party review and include information in its next periodic report on the procedures established to ensure compliance with the views and recommendations adopted by the Committee under the Optional Protocol to the Covenant, also bearing in mind the obligations under article 2 of the Covenant.

26. With regard to article 2 of the Covenant, the Committee recommends that all provisions in domestic law discriminating against non-citizens be systematically reviewed and brought into line with articles 2 and 26 of the Covenant.

27. The Committee recommends that the State party review the Law on the Implementation of the Constitution with regard to the obligation to take an oath of conscience, with a view to bring the Law fully into line with non-discrimination provisions and article 25 of the Covenant and provide for the right to an effective remedy against a decision not to appoint or dismiss a person in case of refusal to take such oath.

28. The Committee recommends that laws be adopted to enable victims of violation of the rights guaranteed under the Covenant to be effectively compensated under domestic law.

29. The Committee recommends that information on the situation of women be provided in the second periodic report, and, more generally, that necessary

steps be taken to include appropriate programmes in formal and informal education in order to achieve equality between the sexes.

30. The Committee urges the State party to enact legislation in conformity with the provisions of article 4 of the Covenant.

31. The Committee urges the Government to reduce substantially the number of crimes for which the death penalty may be imposed, in accordance with article 6 of the Covenant pending the adoption of the new Criminal Code that will abolish the death penalty.

32. With regard to article 7 of the Covenant, the Committee strongly recommends that article 114 of the Criminal Code be reviewed so as to ensure its compliance with the broader scope of torture under the Covenant, and calls the attention of the authorities to its General Comment No. 20 (44).

33. The Committee urges the State party to take immediate steps to ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person in conformity with articles 7 and 10 of the Covenant.

34. The Committee emphasizes the need for effective control over the police and the prison officials. Intensive training and education programmes in the field of human rights for law enforcement officials as well as for prison officials are recommended to ensure their observance of the Covenant and other international instruments.

35. The Committee recommends that the Government of Estonia adopts domestic legislation governing the treatment of asylum-seekers in compliance with the Covenant. In that regard, the Committee further recommends that the Government seek assistance from international organizations including the Office of the United Nations High Commissioner for Refugees and consider acceding to the 1951 Refugees Convention as well as the 1967 Protocol thereto.

36. With respect to the rights of minorities, the Committee strongly recommends that national legislation be amended to bring within the scope of the Law on Cultural Autonomy all minorities contained in article 27 of the Covenant and draws attention of the authorities to its General Comment No. 23(50).

37. The Committee recommends that the Covenant, the Optional Protocol and the Committee's comments be widely disseminated in Estonia. Additionally, the Committee recommends that human rights education be provided in school at all levels and comprehensive human rights training be provided to all segments of the population, including law enforcement officers and all persons involved in the administration of justice. In this regard, the Committee suggests that the State party avail itself of the technical cooperation services of the United Nations Centre for Human Rights.